

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDUARDO GONZALEZ, *et al.*,

Plaintiffs,

v.

ABERCROMBIE & FITCH CO., *et al.*,

Defendants.

No. C 03-2817 SI

Related Cases: No. C 04-4730, No. C 04-4731

**ORDER AFFIRMING SPECIAL  
MASTER'S DECISION**

Plaintiffs' appeal of the Special Master's decision regarding Abercrombie's motion to dismiss dispute resolution and enforcement proceedings is scheduled for a hearing on August 15, 2008. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matter is appropriate for resolution without oral argument, and VACATES the hearing. For the reasons set forth below, the Court DENIES plaintiffs' motion, and AFFIRMS the Special Master's decision.

**DISCUSSION**

Plaintiffs challenge the Special Master's April 24, 2008 Decision Regarding Abercrombie's Motion to Dismiss.<sup>1</sup> In that decision, the Special Master dismissed enforcement and dispute resolution proceedings initiated by plaintiffs concerning Abercrombie's compliance with the marketing diversity requirement of the Consent Decree. The Special Master held that the Consent Decree permits plaintiff to assert a violation of the marketing diversity requirement under two circumstances only, and that

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<sup>1</sup> Defendants state that plaintiffs are also appealing the Special Master's May 6, 2008 Decision Regarding Lead Counsel's Motion for Reconsideration and/or Clarification. However, neither plaintiffs' motion nor reply brief addresses the May 6, 2008 decision, and thus the Court will not review it.

1 plaintiffs' December 10, 2007 letter initiating dispute resolution proceedings asserted a violation of that  
2 requirement in a manner not permitted by the Decree. Plaintiffs seek an order reversing the Special  
3 Master's decision, approving the Monitor's use of census numbers to measure Abercrombie's  
4 compliance with the marketing diversity requirement, and ordering the parties to meet and confer with  
5 the Monitor regarding what steps Abercrombie should take to ensure future compliance with that  
6 requirement.

7 Plaintiffs do not dispute that the Consent Decree limits the circumstances under which plaintiffs  
8 can seek relief for a violation of the marketing diversity requirement, nor do they contend that the  
9 current matter falls under one of the authorized circumstances. Plaintiffs assert that while plaintiffs  
10 agreed to limit when *they* could independently assert a violation of the marketing diversity requirement  
11 and limit the remedies *they* could obtain based upon such a violation, nothing in the Consent Decree  
12 limits the Court's authority to enforce the Decree's marketing diversity requirement. Plaintiffs argue  
13 that the Court possesses such authority both by virtue of Section V of the Decree, which provides that  
14 the Court shall retain jurisdiction for the purpose of issuing orders "that may be necessary to implement  
15 the relief provided," and also due to the special nature of the Consent Decree, which is akin to a Court  
16 order since it was approved by the Court.

17 The Court is not persuaded by plaintiffs' arguments. As the Special Master found, the parties  
18 carefully negotiated the language of the Consent Decree to (1) impose a marketing diversity requirement  
19 on Abercrombie (Section X.C.1); (2) delineate the two circumstances under which plaintiffs could  
20 initiate the dispute resolution process in the event of an alleged breach of that requirement (Sections  
21 X.C.1.a and b); (3) authorize the Monitor to review compliance with the objectives of the Decree  
22 (Section X.C.2); and (4) state that no one has the authority to alter or seek to alter Abercrombie's  
23 marketing materials (Section X.C.2). The Court notes that the Consent Decree does not contain any  
24 specific benchmarks concerning marketing materials, such as the use of census data which plaintiffs ask  
25 this Court to approve. Similarly, while the Consent Decree empowers the Monitor to evaluate  
26 Abercrombie's marketing, it does not authorize the Monitor to initiate the dispute resolution process or  
27 otherwise seek relief for alleged violations of the marketing diversity requirement. Although the Court  
28 agrees with plaintiffs that the Court possesses the inherent authority to enforce the terms of the Consent

Decree, allowing plaintiffs to initiate the dispute resolution process in the face of these provisions would, as the Special Master found, “vitate the bargain the parties struck.” Accordingly, the Court DENIES plaintiffs’ motion and AFFIRMS the Special Master’s decision.

**IT IS SO ORDERED.**

Dated: August 12, 2008



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SUSAN ILLSTON  
United States District Judge